In the Supreme Court of the United States

OCTOBER TERM, 1967

No. 868

ROCCO PRANNO, PETITIONER

v.

UNITED STATES OF AMERICA

No. 1115 Misc.

WAYNE SEIDLER, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITIONS FOR WRITS OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

OPINION BELOW

The opinion of the court of appeals (Pet. App. No. 868, 1–6) is not yet reported.

JURISDICTION

The judgment of the court of appeals was entered on September 27, 1967. Petitions for rehearing were denied on November 3, 1967. The petition for a writ of

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certiorari in No. 868 was filed on December 1, 1967. By order of Mr. Justice Marshall, the time for filing a petition for a writ of certiorari in No. 1115 Misc. was extended to and including January 2, 1968, and the petition was filed on December 29, 1967. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

QUESTIONS PRESENTED

1. Whether the evidence sustained the conviction of petitioners for conspiracy to violate the Hobbs Act (raised in both cases).

2. Whether petitioners were shown to have the requisite intent (raised in both cases).

3. Whether evidence as to the intended use of a manufacturing plant was within the scope of the indictment (raised in No. 868).

4. Whether evidence of a conversation participated in by one petitioner was properly admitted against the other as in furtherance of the conspiracy (raised in No. 868).

5. Whether the trial court's comment, after a witness had experienced difficulty in understanding questions which were put to him, was improper (raised in No. 868).

STATUTE INVOLVED

18 U.S.C. 1951 provides, in pertinent part:

> (a) Whoever in any way or degree obstructs, delays, or affects commerce or the movement of any article or commodity in commerce, by robbery or extortion or attempts or conspires so to do, or commits or threatens physical violence to

any person or property in furtherance of a plan or purpose to do anything in violation of this section shall be fined not more than $10,000 or imprisoned not more than twenty years, or both.

(b) As used in this section—

* * * * *

(2) The term "extortion" means the obtaining of property from another, with his consent, induced by wrongful use of actual or threatened force, violence, or fear, or under color of official right.

STATEMENT

After a trial by jury in the United States District Court for the Northern District of Illinois, petitioners were convicted of conspiracy to obstruct interstate commerce by extortion, in violation of 18 U.S.C. 1951. Pranno was sentenced to imprisonment for fifteen years and Seidler to imprisonment for five years (R. 27, 47–48). The court of appeals affirmed.

The evidence showed that in the spring of 1960 the International Paper Company purchased a tract of land in Northlake, Illinois, as the site for a manufacturing plant and in September selected a construction company to erect the building (R. 244–253, 389–396). Shortly thereafter, petitioner Pranno (also known as Jimmy Martell) told co-defendant McCabe, a civil engineer who reviewed the plans submitted to the municipality for issuance of a building permit, that a big company was locating a facility there. Pranno suggested that McCabe make his requirements for compliance expensive enough so that all those

involved could "make a buck" (R. 360–468).[1] At a subsequent meeting, at which petitioner Seidler, a Northlake alderman, was present, the name of the company was disclosed and means for carrying this extortion plan into effect were discussed (R. 468–480). On October 25, Seidler told representatives of the paper and construction companies that McCabe's approval of their plans would be necessary before a permit would be issued (R. 97–99). On the following day, McCabe told representatives of the two companies that no permit would be issued until his firm was paid a fee of $20,000, a figure previously agreed upon by the conspirators (R. 479–480, 99, 210–243). After further demands by McCabe for this sum, accompanied by threats of requirements which were not feasible, agreement was reached on a fee of $16,000 (R. 400–408, 480–487). Such sum was thereafter paid, in addition to the regular fee for issuance of the permit (R. 64, 107, 400, 403, 408).

ARGUMENT

1. Neither petitioner disputes his engagement in a conspiracy to obtain an exorbitant payment in return for the issuance of a building permit. But both petitioners contend, although in slightly different form, that the evidence was insufficient to show that their conduct affected interstate commerce within the mean-

[1] One Pete Anderson, building commissioner of Northlake, was also charged, tried and convicted along with petitioners, and was sentenced to imprisonment for three years. He appealed to the Seventh Circuit along with petitioner Pranno, but dismissed his appeal on the date of oral argument.

ing of the Hobbs Act. Pranno argues that no delay in fact was caused and that the work of constructing the plant continued without interruption. However, the charge here was conspiracy. Had the victims of the scheme resisted petitioners' demands, such delay would have occurred and interstate commerce in the materials for constructing the plant and the products of the plant would have been impeded. The purpose of the statute is to protect commerce against injury from extortion. *United States* v. *Green,* 350 U.S. 415, 420; *United States* v. *Provenzano,* 334 F. 2d 678, 685 (C.A. 3), certiorari denied, 379 U.S. 947; *United States* v. *Varlack,* 225 F. 2d 665 (C.A. 2). The exaction of tribute from contractors engaged in local construction work who are dependent upon interstate commerce for materials and supplies or who are engaged in constructing facilities to serve such commerce is thus within the statutory proscription. *Hulahan* v. *United States,* 214 F. 2d 441, 445 (C.A. 8), certiorari denied, 348 U.S. 856. That no delay actually occurred by reason of the conspiracy is irrelevant. *Anderson* v. *United States,* 262 F. 2d 764, 770 (C.A. 8), certiorari denied, 360 U.S. 929.

Pranno's further contention that no federal offense was proved because the payment constituted a bribe by the two companies concerned is without merit. Nothing in the record suggests that they sought to make such a payment. On the contrary, the evidence showed that the demands were made by the conspirators and reluctantly acceded to by the officials of the two companies to avoid economic loss. Such con-

duct constitutes a violation of the Hobbs Act. *United States* v. *Kramer,* 355 F. 2d 891, 897 (C.A. 7); *United States* v. *Dale,* 223 F. 2d 181, 183 (C.A. 7); *United States* v. *Postma,* 242 F. 2d 488, 492 (C.A. 2), certiorari denied, 354 U.S. 922.

Seidler argues that the statute should be read to make criminal only activities which are aimed at directly obstructing, delaying or affecting the movement of an article in commerce, not acts which indirectly might frustrate the movement of commerce not yet begun. There is no warrant for such an interpretation. By its terms, the statute applies to anyone who "in any way or degree" obstructs, delays or affects either "commerce or the movement of any article or commodity in commerce." It applies not only to the completed acts, but to attempts or conspiracies. As this Court stated, the Hobbs Act "speaks in broad language, manifesting a purpose to use all the constitutional power Congress has to punish interference with interstate commerce by extortion, robbery or physical violence." *Stirone* v. *United States,* 361 U.S. 212, 215; see *United States* v. *Kramer,* 355 F. 2d 891, 896 (C.A. 7); *United States* v. *Green,* 246 F. 2d 155, 160 (C.A. 7), certiorari denied, 355 U.S. 871.

Moreover, the indictment charged and the evidence showed that petitioners conspired to obstruct interstate commerce. Petitioners knew they were dealing with International Paper Company, that that company was planning to construct a building in Northlake, and that their plans were to block the project until the money they demanded was paid. They also

knew that "[t]he interstate movement of building materials, raw materials, and finished goods would be correspondingly delayed" (Pet. App. No. 868, 2). Thus, they inevitably contemplated the obstruction of commerce within the meaning of the Hobbs Act, for the statute "not only prohibit[s] the obstruction of commerce by extortion, but also prohibit[s] extortion by any threat, the carrying out of which would obstruct commerce" (Pet. App. No. 868, 3). It was thus unnecessary to prove that petitioners expressly intended to affect interstate commerce. As the court below pointed out (Pet. App. No. 868, 4), "All that must be proved * * * is that defendants conspired to commit extortion, and that the natural effect of carrying out their threat, whether they were conscious of it or not, would affect commerce." Petitioners were thus shown to have had the requisite intent.

2. Various other contentions are made in No. 868:

(a) It is urged that the intended use of the plant to be constructed at Northlake, involving interstate commerce, was not within the scope of the indictment. But the indictment alleged that "[t]he building to be constructed * * * was to be used * * * as a manufacturing plant for the production of paper and cardboard containers from rolled raw paper stock milled at the mills of International Paper Company located at Georgetown, South Carolina and Spring Hill, Louisiana, and shipment of such paper and cardboard containers so produced to the States of Iowa, Indiana, Minnesota, Michigan and Illinois" (R. 2–3). It was further charged that petitioners

and others conspired "to obstruct, delay and affect commerce, as that term is defined in [18 U.S.C. 1951], *and* the construction of the building at 635 North Northwest Avenue, Northlake, Illinois, *and* the movements of materials, supplies, and other commodities required for the construction of said building in commerce" (R. 3) [emphasis added]. The specific description of the interstate nature of the business intended to be carried on at the plant would be meaningless unless applying to the allegation that petitioners conspired to obstruct, delay and affect commerce, as defined in the statute. The reference thereafter to the interstate movement of construction supplies was in the conjunctive. Interference with commerce both as to building supplies and the products of the plant was thus charged in the indictment, a fact which distinguishes this case from *Stirone* v. *United States,* 361 U.S. 212.

(b) The former city manager of Northlake testified that on November 5, 1960, shortly after he had taken office (and before the payment of the $16,000 had been made), Alderman Seidler asked him about the changes which he had been making in the city government, said that he, Seidler, had been receiving certain payments from persons having business with the city and asked whether the city manager would want to share in them. The City manager declined (R. 868–872). The trial court properly admitted this conversation into evidence as in furtherance of the conspiracy. It occurred while the conspiracy was still in progress and involved an attempt to make certain that existing arrangements

would not be upset. See *United States* v. *Sopher*, 362 F. 2d 523, 527 (C.A. 7), certiorari denied, 385 U.S. 928.

(c) When the city manager was testifying he made several responses which were outside the scope of the questions put and as to which the court sustained defense objections. The witness finally succeeded in understanding the court's rulings and answered the question as to what he did after his conversation with Seidler by saying that he made application for employment elsewhere. The court said, "Very good," and that part of the questioning was terminated. No objection was made to the comment of the court. Viewed in context, the court's comment was merely an expression of satisfaction that a responsive answer had finally been given to the question; it was not in any proper sense a comment on the evidence. Clearly there was no prejudicial error.

CONCLUSION

For the foregoing reasons, it is respectfully submitted that the petition for a writ of certiorari should be denied.

ERWIN N. GRISWOLD,
Solicitor General.
FRED M. VINSON, JR.,
Assistant Attorney General.
BEATRICE ROSENBERG,
KIRBY W. PATTERSON,
Attorneys.

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